

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOHN K. DRAKE, M.D., ET AL.

PLAINTIFFS

VERSUS

CAUSE NO.: 1:08-CV-690-LTS-RHW

NATIONWIDE MUTUAL FIRE INS. CO., ET AL

DEFENDANTS

**MOTION TO FILE EXHIBIT 2 AND 3 OF PLAINTIFFS' [114] SUPPLEMENTAL
RESPONSE IN OPPOSITION TO DEFENDANTS' [91] MOTION TO STRIKE
PLAINTIFFS' CLAIMS FOR EMOTIONAL DISTRESS UNDER SEAL**

COME NOW THE PLAINTIFFS, by and through counsel, and file their *Motion to File Exhibit 2 and 3 of Plaintiffs' [114] Supplemental Response in Opposition to Defendants' [91] Motion to Strike Plaintiffs' Claims for Emotional Distress Under Seal*, and in support thereof would show the Court as follows:

1. On or about September 30, 2009, Plaintiffs filed their *Notice of Conventional Filing RE: Exhibits 2 and 3 of Plaintiffs' Supplemental Response in Opposition to Defendants' [91] Motion to Strike Plaintiffs' Claims for Emotional Distress*. Plaintiffs were advised by the Court that the appropriate *Motion* would need to be filed for the Court's consideration on allowing said Exhibits to be filed under seal. Plaintiffs appreciate the guidance, counsel, and courtesies of the Court.

2. Plaintiffs request that Exhibits 2 and 3 of Plaintiffs' [114] *Supplemental Response in Opposition to Defendants' [91] Motion to Strike Plaintiffs' Claims for Emotional Distress* be filed under seal as said documents that form Exhibit 2 and 3 constitute Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and cannot be electronically filed with the Court. Plaintiffs request to file said documents under seal is out of an abundance of caution. However, if the Court does not find that

said documents should be filed under seal in this cause, Plaintiffs will make diligent efforts to redact any potential privileged information. Plaintiffs intend to provide hard copies of said exhibits under seal in lieu of electronic filing.

WHEREFORE PREMISES CONSIDERED, Plaintiff respectfully requests the Court to grant Plaintiffs' *Motion to File Exhibits 2 and 3 of Plaintiffs' [114] Supplemental Response in Opposition to Defendants' [91] Motion to Strike Plaintiffs' Claims for Emotional Distress Under Seal* and any additional relief in favor of the Plaintiffs deemed appropriate by this Honorable Court.

Respectfully submitted this the 5th day of October, 2009.

JOHN K. DRAKE, M.D.
DEBORAH DRAKE
Plaintiffs

By: *s/ W. Corban Gunn*
W. CORBAN GUNN, (MSB #101752)

Clyde H. Gunn, III, (MSB #5074)
Christopher C. Van Cleave, (MSB #10796)
W. Corban Gunn, (MSB #101752)
David N. Harris, Jr., (MSB #100790)
CORBAN, GUNN & VAN CLEAVE, PLLC
P.O. Drawer 1916
Biloxi, Mississippi 39533
Telephone: (228) 432-7826
Facsimile: (228) 456-0998
corban@cgvclaw.com

CERTIFICATE OF SERVICE

I, W. Corban Gunn, Esq., herby certify that on October 5, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM / ECF system which will send notification of such filing to the following:

Dana E. Hill, Esq.
dhill@kirkland.com

Laura L. Gibbes, Esq.
lgibbes@watkinsludlam.com

This the 5th day of October, 2009.

/s/ W. Corban Gunn
W. CORBAN GUNN, (MSB #101752)